

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

INNOVATIVE CONCEPT GROUP, INC.,)	
)	CIVIL NO. 3:03-CV-549
Plaintiff,)	
)	JUDGE PHILLIPS
v.)	
)	
FOOD SALES OF TENNESSEE, INC.,)	
FOOD SALES OF EAST TENNESSEE, INC.,)	
RANDALL SANDERS, individually, and)	
DAVID TIMOTHY O'CONNOR, individually,)	
)	
Defendants.)	

CONFIDENTIALITY AGREEMENT

It is hereby stipulated and agreed between Innovative Concept Group, Inc. ("Innovative") and Food Sales of Tennessee, Inc.¹, Food Sales of East Tennessee, Inc.², Randall Sanders, and David Timothy O'Connor (collectively hereinafter referred to as "Defendants"), through their respective attorneys, that the following conditions shall govern the use and disclosure of documents produced by H.J. Heinz Company and/or Portion Pac, Inc. (collectively referred to as "Heinz") pursuant to a subpoena from Defendants.

1. Documents produced by Heinz (hereinafter referred to as the "Heinz Documents") may be disclosed solely for the purpose of this lawsuit, for no other purpose and only to the following categories of persons:

(a) outside attorneys for any party engaged in the litigation of the lawsuit and professional, clerical, secretarial and other support personnel of such attorneys;

¹ Food Sales of Tennessee, Inc. maintains that its proper name is FoodSales Tennessee, Inc.

² Food Sales of East Tennessee, Inc. maintains that its proper name is FoodSales East Tennessee, Inc.

(b) persons who are expressly retained to assist such party's counsel in the preparation of the lawsuit for trial, including, but not limited to, independent auditors, outside accountants, statisticians, economists, expert witnesses and other consultants, and the employees of such person;

(c) persons who are parties or officers, directors or employees of parties to the lawsuit;

(d) this Court and its employees and/or the trier of fact and court reporters transcribing trial of deposition testimony taken in the lawsuit and notarizing officers; and

(e) personnel of Innovative and Defendants and persons, including former personnel, who authored or generated any of the Heinz Documents, in the context of deposition or trial testimony of such persons or interrogatories addressed to such party.

The Heinz Documents shall not be disclosed to any other persons.

2. Before disclosing the Heinz Documents to any person pursuant to Paragraph 1 above, counsel for the party making such disclosure shall provide each such person with a copy of this Confidentiality Agreement and shall advise each such person that he shall not disclose any of the documents to any other person and make them sign a comparable confidentiality agreement.

3. No copies of the Heinz Documents shall be made except to the extent necessary for the lawsuit and if the duplicating process by which copies of the documents are made does not reproduce the "CONFIDENTIAL" stamp appearing on the original, all copies shall be stamped with a "CONFIDENTIAL" designation. All copies of the Heinz Documents shall be kept in secure areas at the office of outside counsel or experts who are consulted concerning this matter.

4. Counsel for the parties to whom the Heinz Documents have been furnished shall be responsible for restricting disclosure in accordance with the provisions of this Confidentiality Agreement.

5. This Confidentiality Agreement shall not be deemed a waiver of:

- (a) any party's right to object to any discovery request on any ground;
- (b) any party's right to seek an order compelling discovery with respect to any discovery request;
- (c) any party's right at any proceeding herein to object to the admission of any evidence on any ground; or
- (d) any party's right to claim that any information disclosed in the course of this litigation is proprietary and/or otherwise barred from disclosure or use for any purpose.

6. This Confidentiality Agreement shall not apply to any of the Heinz Documents which (a) was in the possession of the recipient prior to disclosure; or (b) subsequent to disclosure came in the possession of the recipient from a third party who is under no obligation or duty to refrain from disclosing it.

7. The provisions of this Confidentiality Agreement shall continue in effect with respect to the Heinz Documents until expressly released by Heinz, and such effectiveness shall survive the entry of a final judgment herein. Unless otherwise agreed by Innovative and Defendants, upon final resolution of this action, each party shall return all of the Heinz Documents in its possession or control and all copies thereof to Heinz.

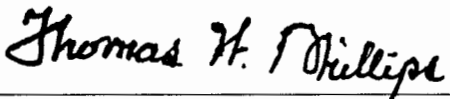
8. Nothing in this Confidentiality Agreement shall operate to require the production of information or documents that are privileged or otherwise protected from discovery.

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9. Nothing in this Confidentiality Agreement shall operate as an admission by any party that any particular document or information is relevant or admissible in evidence at the trial of this action.

10. This Confidentiality Agreement may be amended by the Court to prevent manifest injustice. Additional confidentiality orders may also be entered whenever deemed appropriate by the Court.

Entered this 11th day of OCT 2005.



U.S. Magistrate Judge

APPROVED FOR ENTRY:

Dated: 10/10/05

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